Criminal Misc. Application No.95 of 2002

Chet Ram and two others …….. Applicants.

Versus

Sub Divisional Magistrate,Khatima
District –Udham Singh Nagar and two
Others. …….. Opposite parties.

…….

Hon'ble Irshad Hussain,J.

Heard Sri Sudhir Singh, learned counsel for the applicants and learned Additional Government Advocate.

Through this application, the order impugned dated 01.05.2002 has been challenged. The order was passed by the respondent No.1 in the case under Section 146 of the Criminal Procedure Code. In the impugned order it has been mentioned that the report received from the police disclosed that the land is in possession of the other party. No finding has been given about the apprehension of breach of peace and also it is significant that any report of the police cannot finally settle the question of possession over the property in dispute. The learned Magistrate has wrongly relied on the report of the police in regard to the possession and the Magistrate has to consider this aspect on the basis of the entire material on record. In view thereof the impugned order cannot be legally sustained and the same is liable to be set aside.

The impugned order is set aside and the application is disposed of accordingly. The learned Magistrate shall dispose of the application under Section 146 of the Criminal Procedure Code according to law and the observations made above preferably within a period of fifteen days from the date of receipt of this order.

(Irshad Hussain, J.)

22.6.2002
P.Singh